

LAW OFFICES
HALEY BADER & POTTS P.L.C.
4350 NORTH FAIRFAX DR., SUITE 900
ARLINGTON, VIRGINIA 22203-1633
TELEPHONE (703) 841-0606
FAX (703) 841-2345

POST OFFICE BOX 19006
WASHINGTON, D.C. 20036-9006
TELEPHONE
(202) 331-0606

MICHAEL H. BADER
ADMITTED IN VA AND D.C.

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL
RECEIVED

NOV - 6 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 6, 1995

OUR FILE NO.
0803-102-63

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: HEFTEL BROADCASTING CORPORATION
IB Docket No. 95-91
GEN Docket No. 90-357
RM No. 8610
PP-24
PP-86
PP-87

Dear Mr. Caton:

Submitted herewith on behalf of Heftel Broadcasting Corporation are an original and four copies each of its Comments in the referenced proceeding and of its Motion to Accept Late Filed Pleading.

If there are any questions concerning this matter, please communicate directly with the undersigned.

**HEFTEL BROADCASTING
CORPORATION**

By: Michael H. Bader

Michael H. Bader
Its Attorney

Enclosures (10)
MHB/blr

No. of Copies rec'd 24
List ABCDE

Before The
Federal Communications Commission
Washington, D.C. 20554

NOT FILE COPY ORIGINAL

RECEIVED

NOV - 6 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of

Establishment of Rules and Policies
for the Digital Audio Radio Satellite
Service in the 2310-2360 MHz
Frequency Band

)
) IB Docket No. 95-91
) GEN Docket No. 90-357
) RM No. 8610
) PP-24
) PP-86
) PP-87

TO: The Commission

MOTION TO ACCEPT LATE FILED PLEADING

Heftel Broadcasting Corporation ("Heftel"), by its attorneys,
respectfully moves for acceptance of its Comments in the above-entitled
matter. In support hereof the following is shown:

1. Concurrently herewith, Heftel is proffering its Comments in the
above-entitled matter. The Comments were due on September 15, 1995
and are thus being submitted out of time. Heftel requests that such
Comments be accepted and considered because they principally address
an aspect of this proceeding which was not mentioned in the initial
comments or in the replies of October 13, 1995, and which is material to
the Commission's ultimate licensing and service rule decisions involving
DARS.

2. An important issue in this proceeding, as recognized by the
Commission, is the impact of DARS on terrestrial foreign language
broadcasters such as Heftel. Heftel's AM and FM stations broadcast in
the Spanish language and carry significant amounts of locally-produced
Hispanic programming. Although NAB and ethnic broadcasters who
participated in this proceeding addressed the issue of DARS's impact on
terrestrial broadcasters, no party focused on the fact that in order to

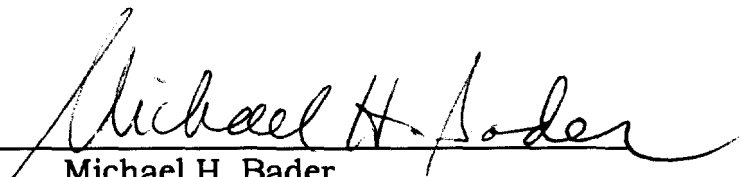
attract advertisers, broadcasters of Spanish-language (and other ethnic) programming typically accord advertisers large discounts, discounts not required to be offered by their English-language counterparts. It is important that this fact, be included on the record. It is surely material to the Commission's evaluation of the true impact of DARS in general and DARS proponents' promises of Spanish-language programming in particular, on Spanish-language broadcasters who would compete with the new service for audience and revenue.

2. Heftel's Comments are succinct and focused; they will assist the Commission in rendering a decision on the service and licensing issue posed in this proceeding. Their submission at this time will in no way delay or complicate this proceeding. We respectfully urge that they be accepted and considered.

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that the subject Motion be Granted.

Respectfully submitted,

HEFTEL BROADCASTING CORPORATION

By: 
Michael H. Bader
Henry A. Solomon

Its Attorneys

HALEY BADER & POTTS P.L.C.
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606
November 6, 1995

Before The
Federal Communications Commission
Washington, D.C. 20554

In The Matter Of)
) IB Docket No. 95-91
Establishment of Rules and Policies) GEN Docket No. 90-357
for the Digital Audio Radio Satellite) RM No. 8610
Service in the 2310-2360 MHz) PP-24
Frequency Band) PP-86
) PP-87

TO: The Commission

COMMENTS OF HEFTEL BROADCASTING CORPORATION

Heftel Broadcasting Corporation ("Heftel"), by its attorneys, respectfully files these Comments in the above-entitled proceeding which looks toward the implementation of service and licensing rules to govern the satellite-delivered digital audio radio service (DARS). In support hereof the following is shown:

I. Identity and Interest.

1. Heftel, whose stock is publicly traded,¹ is the largest Spanish language radio broadcasting company in the United States. It currently owns 16 radio stations in six markets, including 15 stations in Los Angeles, New York, Miami, Chicago and Dallas/Ft. Worth, which are five of the ten largest Hispanic markets in the United States. Heftel's

¹ Nasdaq National Market under the symbol "HBCCA."

stations operate in the AM and FM bands.² Accordingly, Heftel is clearly an “interested person” within the meaning of 47 C.F.R. § 1.415(a).³ Heftel offers these Comments because it believes that the views of Spanish-language broadcasters have not been fully presented to the Commission in this pivotal rule making.

II. DARS Will Pose an Especially Significant Threat to the Economic Health of Foreign Language Broadcasters

2. No party to this proceeding can dispute that if advertiser-supported DARS is authorized there will be some negative impact on traditional radio. Satellite radio will compete with terrestrial broadcasters for local audience and for advertising revenue. In its Notice of Proposed Rulemaking⁴ the Commission acknowledged that DARS may cause some injury to terrestrial broadcasters. Notice at ¶ 13. Parties such as NAB have ably demonstrated how DARS will directly compete with free over-the-air broadcast radio for national advertisers, and how such competition is also likely to diminish stations’ attractiveness to local advertisers, thereby causing those businesses to place ads with other media, including newspapers and cable. Thus the net effect of advertiser-supported DARS will be to impair the local broadcasting structure. As the Commission recognizes, “While listeners could turn to

² Heftel’s subsidiaries are the licensees of the following radio stations: KTNQ(AM), KLVE(FM), Los Angeles; KECS(FM), Gainesville, TX; KMRT(AM), Dallas; KESS(AM), Ft. Worth; KHCK(FM) and KICI(AM), Denton, TX; KICI(FM), Corsicana, TX; KKCK(FM), Granbury, TX; KLSQ(AM), Laughlin, NV; WADO(AM), New York, NY; WAQI(AM); WQBA(AM) and WQBA(FM), Miami, FL; WGLI(AM), Babylon, NY; WRTO(FM), Goulds, FL; and WLXX(AM), Chicago, IL.

³ Because Heftel’s Comments are being submitted out of time they are accompanied by a Motion To Accept Late-Filed Pleading.

⁴ Notice of Proposed Rulemaking, FCC No. 95-229, IB Docket 95-91, Gen Docket 90-357, 60 Fed. Reg. 35166 (July 6, 1995)(“Notice”).

satellite DARS services for national programming and advertising, we believe that....local news, weather, traffic, and public affairs programming could not practically be provided via satellite DARS.” Notice at ¶ 19. DARS will not only cause broadcasters to curtail these important service features, but it is bound to result in the reduction of programming tailored to the unique and diverse cultures of Hispanic Americans and broadcast in the Spanish language.

3. As the Commission is aware, the audience for Spanish-language programming is no longer confined to the Southwest and West. In fact, the ten largest markets in the United States account for approximately 15.8 million Hispanics, representing 62% of the total Hispanic population in the United States. Chicago, for example, is the fifth largest Hispanic market in the United States. It is also a fact that Hispanics in cities such as Chicago or Los Angeles do not necessarily have the same tastes, needs and interests as Hispanics who reside in Miami, Dallas or New York City. Because each market is unique, Heftel’s stations locally produce virtually all of their programming.

4. Satellite radio advocates broadly assure that the delivery of Spanish-language programming throughout the nation will have minimal effect on the economic health of terrestrial radio listenership. The DARS proponents overlook a fundamental economic fact of life well known to Heftel and other broadcasters of Spanish-language programming: At this time Hispanic advertising rates typically are priced at large discounts to English language media with comparable audience shares. Thus, “at the starting gate,” Spanish language stations (indeed, most ethnic stations) are at a fundamental economic disadvantage vis-a-vis their English

language counterparts. Not only do the DARS proponents overlook this point, but not surprisingly, it is not mentioned in the comments of the principal opponents of DARS.

5. Although the rate disparity is bound to narrow as advertisers perceive the effectiveness of advertising to Hispanics in Spanish, many, if not most Spanish language stations -- who pay the same power bills, taxes, wages and other costs of doing business, as their English-language counterparts -- will find it increasingly more challenging to sustain their commitment to localism if, as Heftel expects, national advertisers on satellite radio undercut even the discounted rates offered to advertisers by Hispanic radio outlets. In sum, although advertiser-supported DARS threatens the financial viability of all terrestrial broadcasters, the record should be clear that the threat is most palpable to stations that serve Hispanic and Spanish speaking communities and who must offer discounts in order to attract advertisers.

III. DARS Should Be Rejected, Rescheduled, or Regulated As a Subscription Service

6. Heftel believes that allocating spectrum to DARS was an unsound regulatory decision from the standpoint of efficient utilization of the spectrum. Sponsored by only a handful of proponents, DARS poses an unnecessary and unacceptable risk to the well being of terrestrial broadcasters at precisely the time when many broadcasters are experiencing audience fragmentation as a result of the Docket 80-90 allotments. There is no evidence on this record that satellite radio will serve substantial unmet needs for stations and programming choices, even in the less populated areas of the United States. The evidence is to

the contrary.⁵ Local terrestrial stations have been more than adequately serving broadly diverse listenership throughout the country. And as previously pointed out, these stations will invariably suffer additional audience diversion if advertiser-supported DARS is authorized.

7. If, however, the Commission is determined to authorize satellite-delivered radio, Heftel strongly urges that it defer issuing service and licensing rules until terrestrial AM and FM broadcasters have implemented digital audio radio and can thus compete with satellite radio operators on a relatively equal footing.

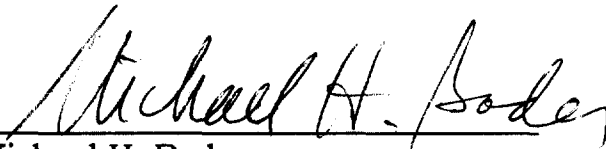
8. If the Commission is committed to implementing licensing and service rules at this time, it should classify satellite DARS as a subscription-only service with scrambled signals. In this way, the Commission may be able to minimize the adverse impact of this new service on terrestrial broadcasters who have been providing valuable service to their local communities during the past seventy-five years. Heftel thus endorses the position articulated at Section VI (pp. 44-49) of

⁵ See, e.g., Comments of the National Association of Broadcasters at 41 (NAB's Comments).

the NAB's Comments.

Respectfully submitted,

HEFTEL BROADCASTING CORPORATION

By: 
Michael H. Bader
Henry A. Solomon

Its Attorneys

HALEY BADER & POTTS P.L.C.
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606
November 6, 1995